

No. 11729

IN THE

United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

WESTERN AIR LINES, INC.,

Appellant,

vs.

LABOR COMMISSIONER OF THE DIVISION OF LABOR LAW
ENFORCEMENT, DEPARTMENT OF INDUSTRIAL RELA-
TIONS OF THE STATE OF CALIFORNIA,

Appellee.

APPELLANT'S REPLY BRIEF.

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

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MILO V. OLSON,
Of Counsel.

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I.

In the Brief of Appellee it is assumed that because the arbitration committee was to determine the amount of wages, therefore, the District Court had power to order Appellant to pay retroactive wage increase to assignors of Appellee. This assumption begs the question. Appellant concedes that the award of the arbitration board determined the question of the amount of wage increase that employees of Western Air Lines were to receive. But that is not the question now at issue. The question is, whether ex-employees are entitled to the benefit of retroactive pay increase. In other words, the question as to what persons are employees of Western Air Lines was never presented to the Board of Arbitration for determination. Thus, the Appellee has failed to answer by its brief that important point made by Appellant.

II.

The difference that now exists between Appellant and Appellee arises as a result of a dispute as to the application of the award. In Point II of Appellant's Opening Brief it appears when such a difference arises the procedure required by law and the procedure the assignors of Appellee agreed to was ignored by Appellee. Appellant does not ask that the arbitration award be modified, it merely insists that Appellee must comply with the provisions of the agreement to arbitrate and with the law. Appellant concedes that the judgment made confirming the arbitration award is final as to matters determined by the Board of Arbitration, but it does not concede that it in any way determined the issues involved on this appeal which were never presented to the Board of Arbitration for decision. By reason of points hereinbefore made, the District Court had no jurisdiction to make the summary order appealed from.

Conclusion.

Appellee has failed to meet the points urged by Appellant. The reasons urged by Appellant for reversal are well taken and the order appealed from should be reversed.

Respectfully submitted,

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